

EXHIBIT A

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE ENVIRONMENTAL
MANAGEMENT COMMISSION

09 EHR 1839

PAMLICO-TAR RIVER FOUNDATION,)
ENVIRONMENTAL DEFENSE FUND,)
NORTH CAROLINA COASTAL)
FEDERATION, and SIERRA CLUB,)

Petitioners,)

v.)

N.C. DEPARTMENT OF ENVIRONMENT)
AND NATURAL RESOURCES,)
DIVISION OF WATER QUALITY,)

Respondent,)

and)

PCS PHOSPHATE, INC.,)

Respondent-Intervenor.)

**AFFIDAVIT OF
DAVID EMMERLING**

I, David Emmerling, being duly sworn, depose and say:

1. I am over the age of 18 and suffer from no legal incapacity. This affidavit is based on my own personal knowledge, information and belief.
2. I am a resident of Greenville, Pitt County, North Carolina.
3. I am the Executive Director of the Pamlico-Tar River Foundation ("PTRF") and have held that position since July 1, 2007. My work as Executive Director of PTRF includes performing the duties of the Chief Administrative Officer and administering all policies and programs of PTRF. These responsibilities include but are not limited to hiring, supervision, and firing of employees as well as directing and supervising all projects and programs including research, public education, advocacy, volunteer recruitment and training,

publicity/communications, governmental relations, membership development, fundraising, budgeting and financial management.

4. PTRF is a North Carolina not-for-profit organization founded in 1981. The organizational purposes of PTRF are to protect, preserve, and enhance the environmental quality of the Tar-Pamlico watershed. PTRF strives to protect the quality of life of those who live along and use the Tar-Pamlico River by protecting the area's water and air quality, fisheries, wetlands, wildlife habitat, natural beauty, and recreation opportunities. Its office is located at 108 Gladden Street, Washington, NC 27889.

5. Commissioner Ernie Larkin has been a member of PTRF since 1982, but does not hold any leadership or advisory positions.

6. Dr. Larkin served on the PTRF Board of Directors from September of 1982 through September 1998. He has not served on the Board since September 1998 and has not served on the Board at any time during the permitting process for the 401 Certification at issue in this contested case.

7. In addition to the Board of Directors, PTRF had a less formal Science Advisory Board from approximately February 2007 through June 2010. The purpose of the Science Advisory Board was to research and provide recommendations to the Board of Directors on issues related to PTRF's mission and to provide feedback to PTRF staff.

8. Dr. Larkin was a member of the Science Advisory Board when it was created. Shortly after its creation in 2007, however, Dr. Larkin effectively withdrew from the SAB and did not participate in meetings or receive emails related to meetings. Due to oversight, Dr. Larkin remained on the list of Science Advisory Board members, but did not participate in meetings or receive updates.

9. Our records indicate that Science Advisory Board was updated on the status of PCS's permitting process at its August and December 2007 meetings, but that Dr. Larkin did not attend those meetings. The email notice for those meetings was not sent to Dr. Larkin. The emails are attached to this affidavit. An email was sent to the Science Advisory Board in February 2007 that included an update on the status of PCS's permitting process, but the email was not sent to Dr. Larkin. The Science Advisory Board did not provide any recommendations to the Board of Directors regarding PCS.

10. Based on the review of our records, Dr. Larkin did not hold any leadership or advisory position that is relevant to PCS's 401 Certification, was not involved in any analysis or deliberations regarding the 401 Certification or this challenge, and did not receive any information related to this challenge that is not available to the general public. As a member, Dr. Larkin received PTRF's public updates, which included updates on this contested case proceeding, but that was the extent of his involvement with PTRF's challenge to PCS's 401 Certification.

I declare under penalty of perjury that the foregoing is true and correct. This 31st day of August, 2012.

David A. Emmerling
David A. Emmerling

NORTH CAROLINA
Orange COUNTY

I, Brenda P. Kenion, A NOTARY PUBLIC FOR SAID COUNTY AND STATE, DO HEREBY CERTIFY THAT DAVID A. EMMERLING PERSONALLY APPEARED BEFORE ME THIS DAY AND HAVING BEEN DULY SWORN, ACCORDING TO LAW, MADE THE ATTACHED AFFIDAVIT. WITNESS MY HAND AND OFFICIAL SEAL, THIS THE 31st DAY OF August, 2012.

Brenda P. Kenion
NOTARY PUBLIC

MY COMMISSION EXPIRES ON: 4/19/2016

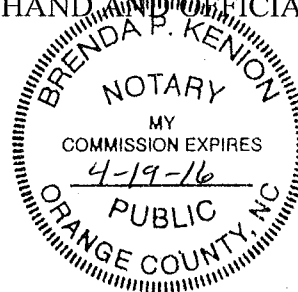


EXHIBIT B

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE ENVIRONMENTAL
MANAGEMENT COMMISSION
09 EHR 1839

PAMLICO-TAR RIVER FOUNDATION,)
ENVIRONMENTAL DEFENSE FUND,)
NORTH CAROLINA COASTAL)
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Petitioners,)

v.)

N.C. DEPARTMENT OF ENVIRONMENT)
AND NATURAL RESOURCES,)
DIVISION OF WATER QUALITY,)

Respondent,)

and)

PCS PHOSPHATE, INC.,)

Respondent-Intervenor.)

**AFFIDAVIT OF
ANN OLIVER**

I, Ann Oliver, being duly sworn, depose and say:

1. I am over the age of 18 and suffer from no legal incapacity. This affidavit is based on my own personal knowledge, information and belief.
2. I am a resident of Orange County.
3. I am the Office Manager for the Chapel Hill, North Carolina office of the Southern Environmental Law Center. My responsibilities include managing all aspects of the office, including ensuring that accurate time logs are kept for each attorney. Attorneys at the Southern Environmental Law Center are required to contemporaneously document time spent on each case.

4. Commissioner Amy Pickle was an attorney in the Chapel Hill office of SELC from 2003 to 2008. Ms. Pickle kept time logs tracking her work on specific cases, including a description of the activity undertaken.

5. Our records indicate that Ms. Pickle did not participate in SELC's representation of Petitioners in this case, either in the permitting process or in the preparation of this contested case. Her time logs do not include any work related to the permitting process or 401 Certification that are the subject of this contested case. In addition, Ms. Pickle left SELC before the 401 Certification was issued.

I declare under penalty of perjury that the foregoing is true and correct. This 4th day of September, 2012.


Ann Oliver

NORTH CAROLINA
Orange COUNTY

I, Brenda P. Kenion, A NOTARY PUBLIC FOR SAID COUNTY AND STATE, DO HEREBY CERTIFY THAT ANN OLIVER PERSONALLY APPEARED BEFORE ME THIS DAY AND HAVING BEEN DULY SWORN, ACCORDING TO LAW, MADE THE ATTACHED AFFIDAVIT. WITNESS MY HAND AND OFFICIAL SEAL, THIS THE 4th DAY OF September, 2012.


NOTARY PUBLIC

MY COMMISSION EXPIRES ON:

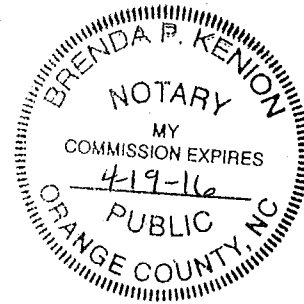


EXHIBIT C

NC Department of Environment and Natural Resources

Environmental Management Commission - Members Bios

Members Information

- Members Bios
- Member Qualifications
- Address and Phone

Environmental Management Commission**EMC Member Bios****April 2012****Stephen T. Smith**

- 1973-present, partner, McMillan & Smith, attorneys, Raleigh
- Listed in the Best Lawyers of America
- 1992, President, Wake County Bar Association and 10th Judicial District Bar
- 1990-1996, Member, N.C. State Bar Disciplinary Hearing Commission
- 1973, J.D. with honors, UNC at Chapel Hill; 1972-1973 staff member, N. C. Law Review
- 1969, A.B., East Carolina University
- 1969-1971 active duty, U.S. Army, honorable discharge, sergeant

Dr. Charles H. Peterson

- Alumni Distinguished Professor, UNC at Chapel Hill, Institute of Marine Sciences, Morehead City, N.C.
- 1968, B.A., Mathematics, Princeton University
- 1970, M.S., Zoology, University of California Santa Barbara
- 1972, Ph.D., Biology, University of California Santa Barbara (oceanography minor)
- 1972, Post-Doctorate, Biology, University of California Santa Barbara

Christopher J. Ayers

- 2009-present, Partner, Poyner Spruill LLP
- 2003-2009, Attorney, Hunton & Williams, LLP
- 2002-2003, Law Clerk, Judge Linda McGee, North Carolina Court of Appeals
- 2002, J.D., University of North Carolina, Chapel Hill, N.C.
 - 2001-2002, North Carolina Law Review, Managing Editor
 - 2000 Gressman-Pollitt Award for Oral Advocacy
- 1999, B.A., Magna Cum Laude, Duke University, Political Science and Sociology
- Articles in the National Law Review Database
 - Renewing the Debate Over Renewables
 - Potential North Carolina Utilities Commission "NCUC" Regulation for Sanitary Districts in N.C.
 - Lights Out on Traditional Bulbs
 - What's So Smart About Smart Grids

Donnie W. Brewer

- President, Rivers and Associates Inc., an engineering, planning and surveying company
- B.A. in Mathematics, UNC at Chapel Hill
- B.S. in Civil Engineering NCSU
- Registered Professional Engineer
- Chairman, N.C. Sedimentation Control Commission
- Member, Consulting Engineers Council of N.C. and Professional Engineers of N.C.

Marvin S. Cavanaugh

- Vice President of Surveying, Cavanaugh & Associates, Winston-Salem, N.C.
- 1958, Engineering Studies, North Carolina State University, Chapel Hill, N.C.
- North Carolina Professional Land Surveyor #L-1148
- South Carolina Professional Land Surveyor #LS 5813
- Virginia Professional Land Surveyor #1217
- Soil and Water Conservation Supervisor currently serving second elected 4 year term
- Area 2 - NCASWCD Past Chairman
- Area 2 District Issues Committee Chairman and Water Resources Committee Chairman
- 2005, 2006, Member of ACEC/PAC - the American Council of Engineering Companies Political Action Committee

Thomas F. Cecich

- 2003-Present, President, TFC and Associates. Consulting practice specializing in safety, health and environmental strategic planning, regulatory analysis & management Training
- 2002-2003 Vice President, Global Business Support Corporate Environment, Health and Safety, GlaxoSmithKline, Research Triangle Park, N.C.
- 2000-2001 Vice President, EHS Regulatory Advocacy and Strategy, Corporate Environment, Health and Safety, GlaxoSmithKline, Research Triangle Park, N.C.
- 1985-2000 Vice President, Environmental Safety, GlaxoSmithWellcome, Inc, Research Triangle Park, N.C.
- 1982-1985 Manager, Industrial Hygiene, IBM Corporation, Research Triangle Park, N.C.
- 1977-1982, Supervisor, Safety/Medical/Security, Allied Chemical Corporation, Moncure
- 1972-1977, Manager, Technical Services, Industrial Extension Service, School of Engineering, NCSU
- 1972, B.S. Industrial Engineering, University of Miami
- 1974, M.S. Industrial Engineering, NCSU
- 1977 Certified Safety Professional by the Board of Certified Safety Professionals
- 1981 Certified Industrial Hygienist by the Board of Industrial Hygiene
- 1998-2000 past board chair, Manufacturers and Chemical Industry Council of N.C.
- October 1993, N.C. Pollution Prevention Advisory Council

Marion Deerhake

- 1983-Present and 1979-1980, RTI International, currently Senior Research Environmental Scientist, Global Climate Change and Environmental Sciences Division
- 1980-1982, General Electric Engineered Materials Group (includes 6 mo. temp. hire to GE via Allstate Design and Development, Latham, NY)
- 1977, B.S. Chemistry, cum laude, Salem College
- 1978, M.S.P.H. Environmental Chemistry, UNC-Chapel Hill
- 2002-Present, NC Superior Court Certified Mediator
- 2000-2008, NC Radiation Protection Commission, ex-officio member

Tom Ellis

- Served as Department of Agriculture and Consumer Service's liaison relating to environment programs; given statewide aquacultural responsibilities in 1998 and was colocated with the Department's Policy Division, 2000-2003.
- Served as point of information for many programs relative to how proposed and current regulation, programs and project affect the ability of farmers to produce food and fiber. This included wetlands, endangered species, water quality, land use planning as well as other issues affecting the farmer's flexibility.
- Responsible for the preparation of the NCDA Lagoon Phase-out Plan prepared at the request of the General Assembly.

- Prior committee and council service includes N.C. Nongame Advisory Board (N.C. Wildlife Resources Commission), Habitat and Water Quality Subcommittee (N.C. Marine Fisheries Commission), N.C. Agricultural Taskforce (N.C. Soil and Water Conservation Commission).
- Co-owner/manager of family farms and forestlands in Vance and Warren Counties.

William L. Hall, Jr., PE, F.NSPE

- 1984-present, Partner, Civil, Environmental and Planning Division, McKim & Creed, P.A., Raleigh, N.C.
- 1972-1984, Project Engineer/Project Manager, Henningson, Durham & Richardson, Inc.
- 1967-1972, Engineering Technician/Hydrologist, U.S. Geological Survey.
- Licensed Professional Engineer, N.C. & S.C.
- 1972, M.S. in Civil Engineering, N.C. State University, Raleigh, N.C.
- 1970, B.S. in Civil Engineering, N.C. State University, Raleigh, N.C.

Steve P. Keen

- 2008 - Present, Wayne County Commissioner, District 4, Goldsboro, N.C.
- Founder and Owner, Adair LLC, Real Estate Development Venture
- Navy Veteran, Past Member, Wayne County Military Affairs Committee
- Past Member, Wayne County Economic Development Commission
- Member, Wayne County Board of Directors for the Little Bank
- Member, ECU Educational Foundation's Executive Committee
- Member, North Carolina Association of County Commissioners Health and Human Services Steering Committee

Dr. Ernest W. Larkin

- 2004-Present, Assistant Dean, Brody School of Medicine, ECU, Greenville, N.C.
- 1994-Present, Chief Medical Officer, Pitt County Memorial Hospital, Greenville, N.C.
- 1966, B.S. Davidson College; combined major in chemistry, biology and physics
- 1970, M.D., Medical College of Virginia, Richmond, Virginia
- 1970-1977, Intern, Resident and Fellowship in Pathology, Medical College of Virginia.
- 1998-2002, N.C. Coastal Resources Commission, Commissioner.

Kevin C. Martin

- N.C. Licensed Soil Scientist; Professional Wetland Scientist, Registered Professional Soil Scientist, N.C. Certified Waste Water Treatment Plant Operator, N.C. Certified Sub-Surface System Operator.
- 1989-Present, Co-founder/Principal Soil & Environmental Consultants, PA, specializing in soil/site evaluation for on-site waste disposal, flood hazard soils and wetland consulting, well sampling and analysis, physical and chemical soils analysis, computer modeling, environmental assessments and other environmental analysis.
- 1984, B.S. in Conservation, Soil Science Concentration, NCSU
- 1987, M.S. in Soil Science, Civil Engineering Minor, NCSU

Jeffrey V. Morse

- 1980-present, Town Manager, Town of Valdese, N.C.
- 1975-1980, Circuit Riding Town Manager for six towns and one county in Western Virginia.
- 1972-1975, Coordinator, Government Training Center, East Tennessee State University, Johnson City, Tenn.
- 1975, Master of City Management, East Tennessee State University, Johnson City, Tenn.
- 1973, B.S., East Tennessee State University, Johnson City, Tenn.

Darryl D. Moss

- 1999- Present, Mayor, City of Creedmoor
- Education- 1980, UNC at Chapel Hill
- 1989-1999, Creedmoor City Commissioner
- Champion Solutions Group, Client Manager

Dr. David B. Peden

- Professor of Pediatrics, School of Medicine, UNC at Chapel Hill
- Director, Center for Environmental Medicine, Asthma and Lung Biology, School of Medicine, UNC at Chapel Hill
- Associate Chair for Research, Department of Pediatrics, School of Medicine, UNC at Chapel Hill
- Chief, Division of Pediatric Allergy, Immunology, Rheumatology and Infectious Diseases, Department of Pediatrics, UNC at Chapel Hill
- 1980, B.A. cum laude, Biology, West Virginia University
- 1984, M.S., Pharmacology & Toxicology, West Virginia University
- 1984, M.D., West Virginia University
- 1984-87. Internship & Residency in Pediatrics, West Virginia University Medical Center

J. Dickson Phillips III

- Partner, Lewis Anderson Phillips Greene & Hinkle, PLLC, Attorneys, Chapel Hill
- Adjunct Professor of Law, UNC School of Law, Chapel Hill
- 1994-2002, Attorney/Mediator and Private Judge, Duke Private Adjudication Center
- 1992- Present, N.C. Superior Court Certified Mediator
- 1975 Davidson College, A.B. History
- 1988, Oxford University, Diploma in Law
- 1979, UNC School of Law, J.D. with honors
- 1978- 1979, Editor in Chief, North Carolina Law Review

Amy Elaine Pickle

- 2008 - Present, Senior Attorney for State Policy, Nicholas Institute for Environmental Policy Solutions at Duke University
- 2003-2008, Senior Attorney, Southern Environmental Law Center
- 2001-2003, Assistant Attorney General, North Carolina Department of Justice
- 2000, University of North Carolina at Chapel Hill, Awarded Juris Doctor with Honors, Licensed July 2000
- 1999-2000, North Carolina Law Review, Executive Articles Editor
- 1997, Winner of the Gressman-Pollitt Award for Oral Advocacy
- 1998-1999, Environmental Law Project, Speaker Chair
- 1999 (Spring), Environmental Law Symposium, Editor
- Researched North Carolina Ocean and Coastal Law for North Carolina Sea Grant
- Relevant Coursework: Administrative Law, Land Use Law, Environmental Law, Ocean and Coastal Law, Natural Resource Law, Scientific Evidence, Independent Study (fishery law), law review article (unpublished) North Carolina's Public Trust Doctrine
- 1994 Dec., Bachelor of Arts in English, Bachelor of Science in Chemistry, University of Florida

Clyde E. Smith Jr.

- 1996 - Present, General Manager, Cleveland County Water, Lawndale, N.C.
- 1995 - 1996, City Manager, City of Landrum, Landrum, S.C.
- 1986 - 1995, Town Manager, Town of Columbus, Columbus, N.C.
- 1977 - 1988, Recreation Director, Rutherford County, Rutherford, N.C.

- 1976, Education, B.S., Recreation and Land Planning, Appalachian State University, Boone, N.C.

Steve W. Tedder

- Owner, Tedder Farm Consulting, King, N.C.
- 2011, Retired (37 years) from Department of Environment and Natural Resources
- B.S., Biology, Western Carolina University, Cullowhee, N.C.
- Recognitions:
 - Governor's Outstanding Service Award
 - Southeastern Water Pollution Biologist Association Charter Member
 - Governor's Award for Excellence
 - Order of the Long Leaf Pine
 - Environmental Protection Agency Award of Excellence
 - Special Recognition of Service from the Environmental Management Commission
 - Special Recognition of Service from the Division of Water Quality
 - Special Recognition of Service from the WPCCC
 - Division of Water Quality Vanguard Award

N.C. Department of Environment and Natural Resources
 1601 Mail Service Center, Raleigh, NC 27699-1601
Headquarters (Environment and Natural Resources Building): 217 W. Jones St.
Archdale Building: 512 N. Salisbury St.
Toll Free: (877) 623-6748



EXHIBIT D

From: Steve Tedder [tedderfarmconsulting@gmail.com]
Sent: Friday, June 24, 2011 7:53 AM
To: Mcmillan, Ian
Subject: FW: Anderson Creek South Phase 1

How is the 401 progressing??

From: Mcmillan, Ian [mailto:ian.mcmillan@ncdenr.gov]
Sent: Thursday, May 26, 2011 10:11 AM
To: Steve Tedder; chris huysman
Cc: ROldham@withersravenel.com; Wakild, Chuck
Subject: RE: Anderson Creek South Phase 1

Hi Steve,

I just got off the phone with Robbie Oldham of Withers & Ravenel, and he is putting the final touches on the site plans for Phase I of the residential subdivision component of Anderson Creek South, and anticipates bringing the plans over to the Archdale Building in short order. We will resume our review once those plans are received.

Thank you, Ian McMillan

Ian J. McMillan, PWS, GISP
NCDENR/Division of Water Quality - Wetlands and Stormwater Branch
1650 Mail Service Center
Raleigh, NC 27699-1650
Office: (919) 807-6364
Fax: (919) 807-6494
Email: ian.mcmillan@ncdenr.gov

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From: Steve Tedder [mailto:tedderfarmconsulting@gmail.com]
Sent: Wednesday, May 25, 2011 8:46 AM
To: Mcmillan, Ian
Subject: FW: Anderson Creek South Phase 1

Morning Ian. Dropped by your office yesterday but kept missing you. This should be the last item that was requested in our 3/31 meeting with Chuck, Cyndi, Matt and yourself. Would really be good if we could proceed with the 401 and that would allow me to keep the developer in Harnett county and out of the legislature and keep Governor Holshouser out of the Governors office.

Appreciate your attention to this one.

Thanks

Tedder

From: Oldham, Robbie [mailto:ROldham@withersravenel.com]
Sent: Tuesday, May 24, 2011 12:31 PM
To: ian.mcmillan@ncdenr.gov
Cc: chris huysman; Steve Tedder; Bret Mangum
Subject: Anderson Creek South Phase 1

Per Chris Huysman's request, please find attached preliminary subdivision plan for referenced project.

Robbie Oldham, PE, LEED AP

WITHERS & RAVENEL

111 MacKenan Drive | Cary, NC 27511
Phone: 919.469.3340 | Fax: 919.467.6008
Direct: 919.535.5180 | Mobile: 919.795.0395
roldham@withersravenel.com
www.withersravenel.com

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Version: 10.0.1375 / Virus Database: 1509/3658 - Release Date: 05/24/11

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Checked by AVG - www.avg.com

Version: 10.0.1375 / Virus Database: 1509/3662 - Release Date: 05/26/11

From: Dorney, John
Sent: Thursday, February 10, 2011 10:48 AM
To: Mcmillan, Ian; Karoly, Cyndi; Kulz, Eric
Subject: FW: amenity lakes

Steve makes some good points (of course many of them are the ones I have made earlier). It may be time to let Eric's new grant gather data and not push this particular envelope now. If that approach is taken, I would suggest that we do a formal public notice saying we will not be too concerned about these until the study is done (sorry Ian – I can hear you now!). Just my two cents worth.

From: Steve Tedder [<mailto:tedderfarmconsulting@gmail.com>]
Sent: Thursday, February 10, 2011 10:36 AM
To: Dorney, John
Subject: RE: amenity lakes

I'm sure Ian and Cyndi know that I do not have the heartburn that the Wetland folks do concerning Amenity Ponds or Lakes. When you look at most of the areas these would probably be located you normally do not see some pristine stream environment. NC is dotted with ponds and lakes and as far as I know, the environment has not been trashed because of these. In reality you are creating more surface water by moving to lotic situations. You have the ability to create situation where there is more surface water, different and more productive environments, and more wetlands in most situations. They offer a buffering capacity for flashy streams and help reduce scouring and damage to downstream waters. They do act as a sediment trap and that is a positive for downstream waters and they assist in the control of stormwater events. Yes, the existing stream characteristics may change some, but that change is not necessarily bad environmentally. The whole state is not a trout stream! Overall, I personally see many more positives than negatives. I understand that some just have the opinion that a developer is just wanting to make money and destroy the environment but that's a pretty short sighted way to see things. Nothing wrong with someone making money, having a more desirable development, etc and those are the same folks that pay the taxes, create the jobs and pay state employee salaries (at least till the ax falls again, and again).

There is a large movement in the works at the legislative building concerning regulatory controls and especially DWQ is being discussed. Might be a great time to sit back and assess what we actually have in rules and what we are doing via policies and memorandums and habit. The amenity lakes issue and altering the position of the Section could be a good step in fostering some support. It is not that many situations that come in the door and with mitigation.....I really do not see a loss for the Division or the environment.

Tedder

From: Dorney, John [<mailto:john.dorney@ncdenr.gov>]
Sent: Thursday, February 10, 2011 9:46 AM
To: Steve Tedder
Cc: Mcmillan, Ian; Kulz, Eric
Subject: RE: amenity lakes

Steve – good question. Ian is our amenity pond dude. On a related note, we have a new EPA grant to collect water quality and bug data over the next several years on several small piedmont and mountain ponds (basically amenity ponds) to examine their water quality impacts but that work will begin this summer so no results yet. However we will be looking for some candidate sites so if you know of any please advise. thankx
 Ian – please handle. thankx

From: Steve Tedder [<mailto:tedderfarmconsulting@gmail.com>]
Sent: Wednesday, February 09, 2011 6:33 PM
To: Dorney, John

Subject: amenity lakes

Can't locate the Divisions current policies on amenity lakes anywhere on the Wetlands web site.....can you point me the right direction>?

Thanks

Tedder



From: Matthews, Matt
Sent: Friday, June 10, 2011 1:49 PM
To: Karoly, Cyndi; Higgins, Karen; Mcmillan, Ian
Subject: FW: Anderson Creek South

I want to reply to this. Can we huddle for a few minutes to help me get my bullet points together?

Thanks.

Matt Matthews
NC DENR/Division of Water Quality
Surface Water Protection Section
1617 Mail Service Center
Raleigh, North Carolina 27699-1617
v-(919) 807-6384
f-(919) 807-6495
Matt.Matthews@ncdenr.gov
<http://portal.ncdenr.org/web/wq/swp>

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

From: Steve Tedder [<mailto:tedderfarmconsulting@gmail.com>]
Sent: Friday, June 10, 2011 1:08 PM
To: Matthews, Matt
Subject: FW: Anderson Creek South

Sounds like Ian is saying he's not doing anything till the 404 is issued. The 401 and 404 are different processes with different showings. The applicant has clearly detailed the total impacts and agreed to mitigate. All the information your staff requested including some that was not necessary for the 401 (site plan for stormwater) was provided to Ian two weeks ago. He does not need the purpose and need clarification the corps is requesting to do the 401. Looks like an end run again. The owners are not going to be very happy when they get this update. I've talked and met with Ian 2-3 times in the past three weeks and none of this was mentioned. Again, typical and the kind of thing that has the regulated community wanting blood.

Tedder
336-413-3491

From: Steve Tedder [<mailto:tedderfarmconsulting@gmail.com>]
Sent: Thursday, June 09, 2011 5:59 PM
To: 'Mcmillan, Ian'
Cc: 'Wakild, Chuck'; 'Matthews, Matt'; 'Karoly, Cyndi'; 'Higgins, Karen'
Subject: RE: Anderson Creek South

Do not see how this really affects the WQ certification! I thought your process was independent from the Corps. Wish you had indicated this to me a week ago when I asked the status. One would think the purpose and need would be a Corps consideration not WQ. The application is clear as to what the total impacts to stream and wetlands will be.

Tedder

From: Mcmillan, Ian [<mailto:ian.mcmillan@ncdenr.gov>]
Sent: Thursday, June 09, 2011 5:14 PM
To: tedderfarmconsulting@gmail.com
Cc: Wakild, Chuck; Matthews, Matt; Karoly, Cyndi; Higgins, Karen
Subject: RE: Anderson Creek South

Steve,

We are waiting on the rebuttal package (regarding project purpose and need) that has been scheduled to be delivered to the USACE for the last couple of weeks. I got an email this afternoon from Crystal Amschler with the USACE stating that this package must be delivered to the USACE by June 15, 2011, or the USACE will withdraw the application. We cannot write the 401 Water Quality Certification until we know what the project is (as this affects impacts to surface waters) and this currently is not settled. Once the purpose and need is established, it will be more clear how the 401 Water Quality Certification will need to be written and ideally what the total impacts to streams and wetlands will be. Hopefully we will receive this information soon and the project determination and impacts can be established so we may move forward.

Thanks,

Ian McMillan

Ian J. McMillan, PWS, GISP
NCDENR/Division of Water Quality - Wetlands and Stormwater Branch
1650 Mail Service Center
Raleigh, NC 27699-1650
Office: (919) 807-6364
Fax: (919) 807-6494
Email: ian.mcmillan@ncdenr.gov

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

From: Wakild, Chuck
Sent: Thursday, June 09, 2011 9:59 AM
To: Matthews, Matt; Higgins, Karen; Mcmillan, Ian
Subject: FW: Anderson Creek South

Someone contact Tedder and give an update. Thanks.

From: Steve Tedder [tedderfarmconsulting@gmail.com]
Sent: Wednesday, June 08, 2011 2:37 PM
To: Wakild, Chuck
Subject: Anderson Creek South

Afternoon Chuck,

Just wanted to follow up on that 401 certification for the Anderson Creek project in Harnett County that we have met on a couple times. About two weeks ago we provided Ian the last of the information they had requested at the meeting you attended with staff, Chris Huysman and me as couple months back. Still have not seen anything from the 401 folks and I have to brief the owner (David Levinson) and Governor Holshouser this Friday. I also know that Representative Lewis has been asking them about the project.

Whatever you can find out from staff would be beneficial. E-mailed Ian a week or so ago and all he said was he was working on it.

I just hope to keep things on a positive note because I know you guys have plenty of more important things to be working on than a simple 401.

The owners are ready to proceed with the next phase but the key for the entire design and layout centers around the lake and this 401.

Appreciate any feedback.

Steve

336-413-3491



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EXHIBIT E



North Carolina Department of Environment and Natural Resources

Division of Water Quality
Coleen H. Sullins
Director

Beverly Eaves Perdue
Governor

Dee Freeman
Secretary

October 4, 2011

DWQ Project # 05-0732v21
Chatham County

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

NNP – Briar Chapel, LLC
Attn: Mr. William Mumford, Vice President Newland Communities
16 Windy Knoll Circle
Chapel Hill, NC 27516

Subject Property: Boulder Point Drive Extension

STORMWATER MANAGEMENT PLAN APPROVAL

Dear Mr. Mumford:

On January 11, 2008, the Division of Water Quality (DWQ) issued a revised 401 Water Quality Certification to temporarily impact 339 linear feet of stream and 0.157 acre of 404 wetlands and to permanently impact 1,666 linear feet of stream and 0.1590 acre of 4040 wetlands in order to construct the Briar Chapel Subdivision in Chatham County.

In order to meet Condition 10 of the 401 Certification for this project, a stormwater management plan for Briar Chapel Parkway and Boulder Point Drive Extension, dated June 22, 2011 and received July 1, 2011, was reviewed by the DWQ. A revised stormwater management plan for Boulder Point Drive Extension, dated September 2, 2011, was received September 6, 2011.

The DWQ has reviewed your SMP and supporting information, and approves the revised SMP to satisfy the stormwater condition required by the 401 Certification. This approval is for the purpose and design described in your application. If the property is sold, the new owner must be given a copy of this approval letter and is thereby responsible for complying with all conditions.

In order to maintain compliance with the approved SMP, please follow the conditions listed below:

1. **Description of the SMP:** The SMP approved by this office consists of a temporary low density area that will utilize Level Spreader-Vegetated Filter Strip (LS-VFS) devices to treat stormwater runoff from the roadway area as well as provide diffuse flow offsite for the one-inch storm event. As residential areas are constructed in the locations of these devices, they will be removed and stormwater will be re-directed into a permanent BMP, likely a wet detention pond that will be designed at that time. **Within 30 months after the completion of this Boulder Drive Extension Project, the permanent BMP devices must be installed and operational.**
2. **Operation and Maintenance of BMPs:** The approved LS-VFS devices must be maintained in accordance with the LS-VFS operation and maintenance (O & M) agreements signed by you on June 28, 2011. The O & M agreements must transfer with the sale of the property or transfer of

October 4, 2011

ownership/responsibility for the BMP facilities. DWQ must be notified promptly of every transfer.

Thank you for your attention to this matter. If you have any questions or wish to discuss these matters further please do not hesitate to contact me at 919-807-6381.

Sincerely,



Annette M. Lucas, P.E.
Wetlands, Buffers and Stormwater Compliance and
Permitting (WeBSCaPe) Unit

AML/aml

cc: U.S. Army Corps of Engineers, Raleigh Regulatory Field Office, Wilmington District, USACOE
Lauren Witherspoon, DWQ Raleigh Regional Office
File Copy
Grant Livengood, PE, McKim & Creed, 1730 Varsity Drive, Raleigh, NC 27606

Filename: 050732v21BriarChapelParkway(Chatham)_SW_Approve

EXHIBIT F

PLEASE PRINT CLEARLY OR TYPE

STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

COUNTY OF (1) Wake

(2) New Hill Community Association

(your name) PETITIONER,

v.

(3) North Carolina Department of Environment and Natural
Resources, Division of Water Quality

RESPONDENT,

(The State agency or board about which you are complaining)

**PETITION
FOR A
CONTESTED CASE HEARING**

I hereby ask for a contested case hearing as provided for by North Carolina General Statute § 150B-23 because the Respondent has:

(Briefly state facts showing how you believe you have been harmed by the State agency or board.)

See attached Petition which is incorporated herein

(If more space is needed, attach additional pages.)

(4) Because of these facts, the State agency or board has: (check at least one from each column)

☒ deprived me of property;
☐ ordered me to pay a fine or civil penalty; or
☒ otherwise substantially prejudiced my rights;

AND

☒ exceeded its authority or jurisdiction;
☒ acted erroneously;
☒ failed to use proper procedure;
☒ acted arbitrarily or capriciously; or
☒ failed to act as required by law or rule.

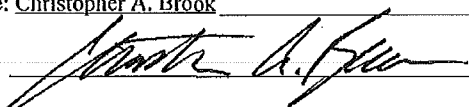
(5) Date: September 9, 2010

(6) Your phone number: (919) 323-3380 ext. 113

(7) Print your full address: 115 Market Street, Suite 470
(street address/p.o. box)

Durham NC 27701
(city) (state) (zip)

(8) Print your name: Christopher A. Brook

(9) Your signature: 

You must mail or deliver a COPY of this Petition to the State agency or board named on line (3) of this form. You should contact the agency or board to determine the name of the person to be served.

CERTIFICATE OF SERVICE

I certify that this Petition has been served on the State agency or board named below by depositing a copy of it with the United States Postal Service with sufficient postage affixed OR by delivering it to the named agency or board:

(10) Mary Penny Thompson
(name of person served)

(11) NC DENR-DWQ
(State agency or board listed on line 3)

(12) 1601 Mail Service Center
(street address/p.o. box)

Raleigh NC 27699-1601
(city) (state) (zip code)

(13) This the 9th day of September, 2010

(14) 

(your signature)

When you have completed this form, you MUST mail or deliver the ORIGINAL AND ONE COPY to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
10 EHR _____

NEW HILL COMMUNITY ASSOCIATION)

Petitioner,)

v.)

N.C. DEPARTMENT OF ENVIRONMENT)
AND NATURAL RESOURCES, DIVISION)
OF WATER QUALITY,)

Respondent.)

PETITION FOR
CONTESTED CASE HEARING

Pursuant to North Carolina General Statutes § 150B-23, The New Hill Community Association (the "Association"), by and through its undersigned attorney, hereby requests a contested case hearing on the issuance of North Carolina 401 Water Quality Certification No. 3833 (the "Certificate") by the N.C. Department of Environment and Natural Resources, Division of Water Quality (the "Division"), on July 16, 2010, to the Western Wake Regional Wastewater Management Facilities Project Partners (the "Partners"). This Petition adopts by reference the comments submitted by the Association on February 9, 2010, to the Division.

The Association alleges as follows:

1. The Association, an alliance of neighbors in the historic community of New Hill, North Carolina, brings this Petition on behalf of its 280 members in an effort to require the Partners to re-open the site selection process for the Western Wake Regional Wastewater Management Facility (the "Wastewater Management Facility") and to ensure compliance with the North Carolina Environmental Policy Act in the site selection process. The Partners want to construct the Wastewater Management Facility in New Hill despite evidence that constructing the Wastewater Management Facility in New Hill would have a disparate impact on African-American and low-income individuals and negative environmental impacts on the New Hill community, the New Hill Historic District, and nearby Raven Rock State Park.

2. New Hill, North Carolina is an unincorporated community located in the western portion of Wake County.

3. The mission of the Association is to preserve and sustain the unique quality of life in the New Hill area by facilitating interaction between citizens. The Association is committed to resisting condemnation of property for facilities that will not benefit the community and advancing common interests by acting as a group with neighboring communities. The Association is a 501(c)(4) organization whose address is Post Office Box 68, New Hill, NC

27562.

4. Members of the Association have participated in the process culminating in the issuance of the Certificate by, among other activities, attending meetings and testifying at hearings.

4. The Partners is a partnership formed by the towns of Apex, Cary, Holly Springs, and Morrisville to pursue construction of regional wastewater management facilities in Wake County.

5. The Partners propose construction of a wastewater management facility, the Wastewater Management Facility at a site located in New Hill, North Carolina ("Site 14").

6. The US Army Corps of Engineers issued a Final Environmental Impact Statement ("FEIS"), evaluating the Partners' proposal for the Wastewater Management Facility, on December 18, 2009. The Division adopted the FEIS in the Certificate.

7. The Certificate is necessary for the construction and operation of the Wastewater Treatment Plant.

8. The actions allowed by the Certificate would have a significant and adverse impact on the health and well-being of the members of the Association. These impacts include, but are not limited to: health impacts from exposure to sewage sludge, exposure to noxious odors, increased noise, increased traffic, and light spill, as well as a decrease in property values.

9. In issuing the Certificate, the Division substantially prejudiced the rights of the members of the Association and exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, failed to act as required by law or rule, and acted arbitrarily or capriciously.

10. Specifically, the Petitioners allege and would show the following at the contested case hearing:

A. In issuing the Certificate, the Division relied on an FEIS that lacked sufficient information to evaluate the social and economic impacts of Site 14 and alternative sites, as required by 01 N.C.A.C. 25.0603(4)(e).

i. The FEIS lacked sufficient information to address environmental justice issues because it lacked sufficient information on the disparate impact of Site 14 on low-income and African-American individuals, including members of the Association.

ii. The FEIS failed to provide information about and an analysis of the interviews conducted around Site 14 during the site selection process.

iii. The FEIS relied on misleading statistics in evaluating the potential impact of the Wastewater Management Facility on the property value of surrounding properties.

iv. The Partners took deliberate steps to avoid public knowledge of the project early in the planning and site selection process.

B. The Partners selected Site 14 for the Wastewater Management Facility and condemned the property before the requisite environmental review was conducted, in violation of the North Carolina Environmental Policy Act, N.C. Gen. Stat. § 113A-4(2),(2a), 01 N.C.A.C 25.0601, which calls for an Environmental Impact Statement ("EIS") to be prepared in advance of any proposed action that may have a significant impact on the environment, in order to inform the decision on that action.

C. The Partners selected Site 14, built water infrastructure, and cleared rights-of way for the electrical infrastructure to support the Wastewater Management Facility before the requisite environmental review was conducted, in violation of the North Carolina Environmental Policy Act, N.C. Gen. Stat. § 113A-4(2),(2a), 01 N.C.A.C 25.0601, which calls for an EIS to be prepared in advance of any proposed action that may have a significant impact on the environment, in order to inform the decision on that action.

D. In issuing the Certificate, the Division relied on an FEIS that lacked sufficient information to establish the need and extent of the need for the Wastewater Management Facility, as required by 01 N.C.A.C. 25.0603(3).

i. The FEIS cited population growth as a justification for construction of the Wastewater Management Facility but used faulty methodology in projecting population growth. The methodology employed did not take into account physical, political, or economic hurdles to future growth.

ii. The FEIS cited a deadline under an existing interbasin transfer certificate (the "IBT Deadline"), regarding withdrawal of water from the Haw River Subbasin, as justification for construction of the Wastewater Management Facility, but the projected permitting and construction timeline shows that the Wastewater Management Facility will not be operational prior to the deadline.

iii. The Town of Holly Springs operates a Wastewater Treatment Plant that discharges into Utle Creek, a tributary to Harris Lake in the Cape Fear River Basin. The FEIS cited a deadline requiring the Town of Holly Springs to cease existing discharge into Utle Creek ("Holly Springs Deadline") as justification for construction of the Wastewater Management Facility, but the projected permitting and construction timeline shows that the Wastewater Management Facility will not be operational prior to the deadline. The Division issued a finding of no significant impact regarding the discharge into Utle Creek and has stated that it will not enforce the Holly Springs Deadline. As the Holly Springs Deadline is no longer in effect, it cannot be used to justify the construction of the Wastewater Management Facility and issuance of its requisite permits.

E. In issuing the Certificate, the Division relied on an FEIS that lacked sufficient

analysis of potential alternatives, as required by N.C. Gen. Stat. § 113A-4(2)(d) and 01 N.C.A.C 25.0603(4).

i. Harris Lake is one of the four alternative discharge sites that the FEIS considered for the Wastewater Treatment Plant. Despite its many identified benefits, the FEIS dismissed the Harris Lake discharge site because the project could not be completed in time to meet the IBT deadline. However, the Wastewater Management Facility, if constructed at Site 14, will not be completed in time to meet the IBT Deadline either. This deadline that the Partners cannot meet was the sole reason the FEIS dismissed the Harris Lake discharge site.

ii. The FEIS failed to consider alternative means of meeting the IBT and Holly Springs Deadlines.

iii. The Partners' action to condemn Site 14 prior to the environmental documentation process frustrated any true consideration of alternatives.

F. In issuing the Certificate, the Division relied on an FEIS that lacked sufficient analysis of possible conflicts between construction of the Wastewater Management Facility at Site 14 and the objectives of federal, state, and local plans, policies, and controls for the affected area, as required by 01 N.C.A.C. 25.0603(6)(f).

i. The FEIS failed to sufficiently analyze potential conflicts between construction of the Wastewater Management Facility at Site 14 and Progress Energy's proposal to construct two new reactors at its Shearon Harris Nuclear site, which will require water withdrawal from the Cape Fear River Basin.

ii. The FEIS failed to sufficiently consider potential downstream impacts, including water quality and present and future use of water by municipalities.

iii. The FEIS failed to sufficiently consider cumulative impacts to Cape Fear River from existing and potential future discharges.

G. In issuing the Certificate, the Division relied on an FEIS that lacked sufficient information on potential environmental impacts, as required by 01 N.C.A.C. 0603(5-6).

i. The FEIS failed to identify the sludge management method that will be employed at Site 14. Absent identification of the sludge management method, the FEIS cannot analyze the potential environmental impact of the proposed project.

ii. The FEIS lacked sufficient information on the environmental impacts of the Wastewater Management Facility on the New Hill Historic District, including but not limited to impacts from sludge management, smell, noise, light spill, and traffic impacts.

iii. The FEIS lacked sufficient information on the potential impacts from sludge management, smell, noise, light spill, and traffic effects of the Wastewater Management Facility on the New Hill community.

iv. The FEIS failed to properly analyze the effect of the Wastewater Management Facility's discharge into the Cape Fear River on Raven Rock State Park. The FEIS fails to consider the discharge's impact on public enjoyment of the park or biotic life protected in the state park system.

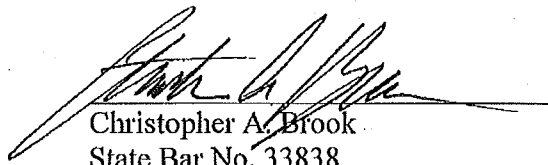
H. Errors and omissions in the FEIS make the Division's decision to issue the Certificate erroneous, arbitrary, and capricious.

PRAYER FOR JUDGMENT

Wherefore, Petitioner prays that that Administrative Law Judge:

1. Allow a contested case hearing on this matter;
2. Issue a declaration that in issuing the Certificate in reliance on the FEIS, the Division substantially prejudiced the rights of the members of the Association and exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, failed to act as required by law or rule, and acted arbitrarily or capriciously.
3. Issue an injunction requiring the Division to withdraw North Carolina 401 Water Quality Certification No. 3833 and not re-issue any such permit or take any further action related to the Wastewater Management Facility project until the aforementioned inadequacies are remedied; and
4. Grant such other and further relief as is just and proper, including attorney's fees.

This the 9th day of September, 2010.


Christopher A. Brook
State Bar No. 33838
Rebecca Jaffe
State Bar No. 40726
Attorney for Petitioner
Southern Coalition for Social Justice
115 Market Street, Suite 470
Durham, NC 27701
Telephone: (919) 323-3380 ext. 113
Facsimile: (919) 323-3942

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Petition and Cover Sheet were filed pursuant to the Office of Administrative Hearings rules by e-mail to: oah.clerks@oah.nc.gov, on September 9, 2010. This also certifies that hard copies of these documents were mailed via U.S.P.S. to the following addressees:

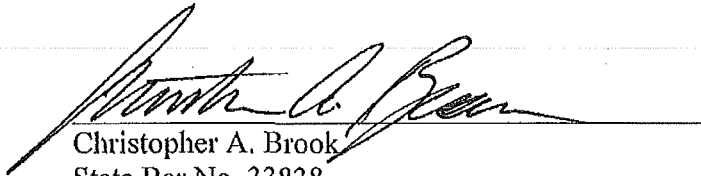
Kim Hausen, Chief Hearings Clerk
Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714

Mary Penny Thompson
North Carolina Department of Environment and Natural Resources
Office of General Counsel
1601 Mail Service Center
Raleigh, NC 27699-1601

Steve Brown
Town of Cary
420 James Jackson Avenue
Cary, NC 27513

Glenn Dunn
Poyner Spruill LLP
P.O. Box 1801
Raleigh, NC 27602-1801

This 9th day of September, 2010.


Christopher A. Brook
State Bar No. 33838